



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Darby Marine & Supply, Inc.  
File: B-228653  
Date: August 7, 1987

### DIGEST

Protester's allegations regarding the awardee's technical and financial capability to perform a contract concern the awardee's responsibility as a prospective contractor. This Office will not review an agency's affirmative determination of responsibility absent a showing of possible bad faith or fraud on the part of procurement officials or that definitive responsibility criteria stated in the solicitation have not been met.

### DECISION

Darby Marine & Supply, Inc. protests the award of a contract to Delta Marine, Inc. under request for proposals (RFP) No. N62673-87-R-0173, issued by the Department of the Navy for the regular overhaul of an MSB-4 minesweeper. Darby protests on various grounds, all of which question Delta's capacity to perform under the contract.

We dismiss the protest.

The solicitation, in Section L-8, provided that award would be made to the responsible offeror whose offer, conforming to the solicitation, is the most advantageous to the government considering only price and price-related factors specified elsewhere in the solicitation. Additionally, Section "M" of the solicitation stated that award would be made to the low responsive, responsible offeror. Thus, the solicitation did not contemplate the submission of technical proposals and the basis for award was price alone among firms found to be responsible.

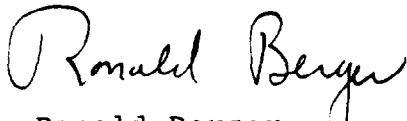
The protester argues that in four significant respects, the awardee's facilities are inadequate to perform the contract. Specifically, the protester states that the awardee does not have adequate dry dock facilities including a "concrete slab base" at which to dock the vessel for purposes of contract performance; that the awardee's facility does not have adequate protective shelters in case of inclement weather;

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that the awardee's facility does not have adequate fire fighting equipment for purposes of contract performance and that, finally, the awardee's facility is currently subject to a sheriff's sale because of a federal tax lien, such sale to take place on August 27.

As the protester's allegations question the awardee's technical and financial capability to perform the contract, they concern matters of responsibility. SRM Mfg. Co., B-222521, et al., July 31, 1986, 86-2 CPD ¶ 138. This Office will not review an agency's affirmative determination of responsibility absent a showing of possible bad faith or fraud on the part of the contracting officer or that definitive responsibility criteria stated in the solicitation have not been met. Id.; Nations, Inc., B-220935.2, Feb. 26, 1986, 86-1 CPD ¶ 203. We do not believe that either exception applies in this case and the protester does not allege that either exception applies.<sup>1/</sup> Further, whether the awardee will in fact meet its contractual obligations to the Navy is a matter of contract administration which is the responsibility of the contracting agency and is not encompassed by our bid protest function. Ridge, Inc., 65 Comp. Gen. 663 (1986), 86-1 CPD ¶ 583.

The protest is dismissed.

  
Ronald Berger  
Deputy Associate  
General Counsel

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<sup>1/</sup> As to the fact that the awardee's facilities are subject to a federal tax lien, we do not believe that this is of any consequence; indeed, we have consistently held that even the fact that an awardee has filed for bankruptcy does not require a finding of nonresponsibility. See, e.g., Security America Services, Inc., B-225469, Jan. 29, 1987, 87-1 CPD ¶ 97.